

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0072
Individual Income Tax
Tax Period: 2004

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ISSUES

I. Individual Income Tax - Assessment

Authority: IC 6-8.1-5-1(b)

Taxpayer protests the assessment of individual income tax based on an error in the preparation of the taxpayer's return.

II. Tax Administration - Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, because of her inexperience with filing taxes, has relied for a number of years on an independent tax professional to prepare her taxes for her. She had received a \$600 refund, but the Department found an error on taxpayer's return, which, when rectified, resulted in tax being owed to the State.

Taxpayer maintains that she does not owe the tax because the errors on the return were not her fault, and requests that the Department waive the negligence penalty because she relied on her independent tax professional and the errors were unintended.

I. Individual Income Tax - Assessment

DISCUSSION

The Department made an assessment of tax based on an error in the preparation of taxpayer's return by the individual who prepared the return for the taxpayer, where taxpayer was erroneously credited with an additional \$600 credit on the return. Taxpayer contends that since the error was not on her part, the inferences resulting in the assessment were not properly drawn.

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). Taxpayer does not cite any statute, regulation, or case law for the proposition that an error by the tax preparer that resulted in an overpayment to taxpayer prevents the Department from seeking recovery of the erroneous overpayment. Therefore, taxpayer has not sustained her burden of proof.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Penalty

DISCUSSION

Taxpayer, in a letter dated September 30, 2005, protested the tax assessed and states that she relied on an independent tax professional to accurately complete her annual tax returns and the issues which gave rise to the audit adjustments were completely unintended by the taxpayer. Taxpayer maintains that a penalty is unwarranted for the same reasons.

IC 6-8.1-10-2.1(d) states that:

If a person subject to the penalty ... can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department *was due to reasonable cause and not due to willful neglect*, the department shall waive the penalty. [*emphasis added*]

45 IAC 15-11-2 further enumerates that:

In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Unintentional errors are in and of themselves not considered reasonable cause for the waiver of penalty, but taxpayer has brought forth sufficient evidence to support her claim that a waiver of penalty is justified.

FINDING

Taxpayer's protest is sustained.

CD/JM/DK 06/21/06